IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-02-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE CHITRA VENKATARAMAN

WRIT PETITION NO.23641 OF 2003

Commandant,
Tamil Nadu Special Police,
IV Battalion, Kovaipudur,
Coimbatore 42. .. Petitioner

Vs.

1. Veerasamy, Ex.P.C.2316,
   41, MGR Nagar,
   Thondamuthur Road,
   Near Raja Maligai Store,
   Vadavalli, Coimbatore 41.

2. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai 600 104. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for the records of the Tamil Nadu Administrative Tribunal, the 2nd respondent herein, relating to the order dated 11.2.2003 in O.A.No.4093 of 2001 and quash the same.

For Petitioners : Mr.S. Gomathy Nayagam
Special Govt.Pleader (Writ)

For Respondent-1 : Mr.K. Thilageswaran

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J U D G M E N T

P.K. MISRA, J

The present writ petition has been filed by the Commandant of Tamil Nadu Special Police, Battalion-IV, Coimbatore, challenging the order passed by the Tamil Nadu Administrative Tribunal in O.A.No.4093 of 2001, whereudner the Tribunal has modified the punishment of removal from service to reinstatement in service with stoppage of increment for five years with cumulative effect.

2. The facts giving rise to the present writ petition are as follows :-

Respondent No.1, hereinafter referred to as "the employee" was appointed as a police constable and he was married to one Valarmathi. The aforesaid wife filed a petition dated 21.12.1999 against the employee alleging that even though they had married on 2.2.1994 and had a 5 year old daughter, the employee got married to women Havildar Vijaya of Tamil Nadu Special Police, IV Battalion on 20.12.1999. Based on such petition, a preliminary enquiry was conducted. In the preliminary enquiry, it was found that inspite of the subsisting first marriage, the employee got married again thus violating the Tamil Nadu Subordinate Police Officers Conduct Rules, 1964. A departmental proceeding under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Civil & Discipline) Rules, was initiated and charge memo was served on 14.1.2000. The employee was also placed under suspension with effect from the said date. The enquiry officer held that charge of bigamy has been proved against the employee. The punishing authority, after giving further opportunity, passed an order of removal from service by order dated 4.5.2000. Thereafter the employee filed O.A.No.4093 of 2001 for quashing such punishment. The Tribunal, even though had concurred with the conclusions of the disciplinary authority that the employee had committed the offence of bigamy and thus violated the Rules, quashed the order of removal from service and instead directed imposition of a lesser punishment of stoppage of five increments with cumulative effect. It was also directed that the employee would not be entitled to backwages for the period during which he was out of service. Such order is under challenge in the present writ petition.

3. The main contention raised by the learned counsel for the petitioner is to the effect that having confirmed the finding of the disciplinary authority that the employee who was employed in a disciplined force had committed bigamy and had thus violated the Rules, the Tribunal committed a grave illegality in interfering with the order of punishment. It has been submitted by the learned counsel for the petitioner that condoning such serious lapses on the

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part of the employee would obviously give wrong signal to the society and the persons holding posts in disciplined Force would commit such offences / deliquencies with impunity.

4. Learned counsel for Respondent No.1, on the other hand, has submitted that even though the Tribunal has confirmed the finding regarding deliquency of the employee, it had exercised its discretion in interfering with the order of punishment keeping in view the fact that subsequently the first wife herself had practically withdrawn her complaint and was staying with the delinquent and the second wife had ceased to live with the delinquent, and such discretionary order should not be interfered with. Learned counsel has further submitted by producing certified copy of H.M.O.P.No.621 OF 2004 filed by Respondent No.1 that at present even the first wife had deserted the delinquent and a suit for dissolution of marriage at the instance of the present Respondent No.1 has been filed and pending.

5. Having heard the learned counsels for both the parties and having perused the order of the Tribunal, we are not at all impressed with the reasonings given by the Tribunal for interfering with the order of punishment. It is no doubt true that the Supreme Court in several cases has recognised the jurisdiction of the Tribunal / High Court to interfere with the punishment imposed by the disciplinary authority, if such punishment appears to be shockingly or grossly disproportionate. By no stretch of imagination it can be said that removal of a police constable from service for having knowingly committed an offence like bigamy is grossly disproportionate.

6. It is no doubt true that the offence of bigamy is cognizable on the basis of the complaint filed by the first wife and it may also be true that there are many instances where even high profiled persons going scot free so far as bigamy is concerned, mainly because no complaint is filed by the aggrieved person, namely, the wife. Even assuming that such bigamous marriage is not punishable under the Indian Penal Code because of the absence of complaint by the person aggrieved, once such a matter is brought to the notice of the departmental authority, the matter is required to be examined by the disciplinary authority in the light of the disciplinary rules applicable to the particular employee. It is not disputed that so far as the Police Department is concerned, there is specific rule prohibiting a bigamous marriage where such marriage is not recognised by the personal law applicable to the employee and even where such bigamous marriage is permissible under personal law, the employee is required to seek permission of the department. In the present case, admittedly such bigamous marriage is not permitted under the personal law applicable to the parties and undisputedly no permission had been obtained. It is thus evident, as found by the disciplinary authority as well as the Administrative Tribunal, that Respondent No,.1 had not only committed the offence of bigamy but had

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also flouted the disciplinary rules applicable. In view of such categorical conclusion, it was not proper on the part of the Tribunal to interfere with the punishment on the pretext that such punishment was grossly disproportionate. In fact the interference by the Tribunal appears to be shocking to the conscience.

7. Learned counsel for Respondent No.1 has referred to a decision dated 30.9.2005 in W.A.Nos.1254 & 1255 of 2005 and W.P.No.29827 of 2004. We have carefully gone through the aforesaid decision. We do not find any support for the present stand of the respondent No.1 in the said decision. As a matter of fact, in the said decision, it has been categorically found that at the time when the disciplinary proceedings was initiated on the allegation of alleged bigamy, the service rule prohibiting such bigamous marriage was not applicable, as such rule prohibiting bigamous marriage was not published in the manner required and it was held that such rule was not applicable at that stage. Moreover, in the said case, the Industrial Tribunal had interfered with the punishment on the ground that departmental enquiry had not been conducted in consonance of the principles of natural justice and, therefore, the punishment was illegal. The Division bench had refused to interfere with the conclusion of the Industrial Tribunal and had also rejected the contention of the management to order for a fresh enquiry as it was found that the Rule itself was not published properly as required under law. We are therefore of the view that the ratio of the aforesaid decision is not applicable to the facts of the present case, where a member of the disciplined force was involved in not only violating the provisions of the Indian Penal Code but also the specific rules applicable to the police force.

8. It is no doubt true that in a recent case(W.P.No.4710 of 2004), decided to-day, i.e., 1.2.2006, this Bench has refused to interfere with the order of the Tribunal, while the Tribunal considering the case of a woman constable living with an already married constable had interfered with the order of removal from service imposed by the disciplinary authority. However, the facts of the said case are distinguishable. In the said case, the Tribunal had come to the conclusion that there was nothing on record to indicate that the women constable was aware about the marital status of the Head Constable with whom she was living as wife. It was further found by the Tribunal that the women constable was more a victim rather than a willing partner and, in such peculiar circumstances, the Tribunal had interfered with the order of punishment and this Bench had refused to interfere with such discretionary order of the Tribunal. The said decision, in the backdrop of an entire factual scenario, is not applicable.

9. For the aforesaid reasons, we allow the writ petition and set aside the order passed by the Tribunal and confirm the order passed by the disciplinary authority. There would be no order as to

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costs. It is however made clear that if the Respondent No.1 has already received any further financial benefit pursuant to the order passed by the Tribunal, such amount may not be recovered.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dpk

To

The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai 600 104.

1 cc to Govt. Pleader, SR. 4293
1 cc to Mr.K. Thilageswaran, Advocate, Sr. 4316

WP.NO.23641/2003

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